The question which now has to be considered is whether the respondent is precluded from claiming the sum of $23,594.44 from the official assignee by reason of the fact that it was part of the purchase price of $30,000 which was paid by him in pursuance of an illegal transaction. It has to be borne in mind that the transaction of the 22nd February 1963 in effect, involved two purchases. First, there was the purchase of the mortgagee bank's legal estate in the shop house for $23,594.44. Secondly, there was the purchase of the bankrupt mortgagor's equitable interest in the shop house for $6,405.56. In my view the transaction of the 22nd February 1963 was clearly illegal in so far as it involved the assignment of Lim's equitable interest in the shop house to the respondent. So far as the assignment of the equitable interest is concerned, I am satisfied that it was made with intent to defraud Lim's creditors as it was made a day before he suspended payment of his firm's debts. Lim, therefore, committed an offence under section 113(1)(b) of the Bankruptcy Ordinance. And the respondent was clearly a party to the illegality as he knew that Lim's intention was to defraud his creditors. There was, however, nothing illegal about the purchase of the bank's legal estate in the shop house. The respondent could have purchased it lawfully from the bank for the same sum i.e. $23,594.44. I therefore hold that the respondent is not precluded by law from claiming $23,594.44 from the official assignee.

For the above reasons it is declared and ordered that the assignment signed on 22nd February 1963 and dated the 2nd March 1963 is absolutely void against the official assignee under section 51 of the Bankruptcy Ordinance and it is declared and ordered that the said assignment was an act of bankruptcy under section 3(1)(b) of the Bankruptcy Ordinance and that the property of the bankrupt Lim divisible among his creditors includes his equitable interest in the shop house No. 52 North Boat Quay and upon payment of the sum of $23,594.44 by the official assignee to the respondent, the registrar of deeds is directed to expunge the entries made on the 4th day of March 1963 in the register of deeds of the registration of the said deed of assignment dated the 2nd day of March 1963 and the entries of the registration of the mortgage dated the 26th of November 1963 (registered in volume 1497 No. 24) and the reconveyance thereof, and it is ordered that the respondent pay to the official assignee the costs of and incidental to this application and also of the registration of this order in the register of deeds.

Order accordingly.

Solicitors: *Chung & Co.; Braddell Bros.*

HAJI EKSAM v. MALAYAN TRADERS CORPORATION

[O.C.J. (Ismail Khan J.) March 15, 1965]

[Malacca — Civil Suit No. 68 of 1962]

Practice and procedure — Notice of motion — No grounds of objection — Grounds of objection set out in affidavit — R.S.C. 1957, O. 70 r. 3.

The defendants sought to set aside a judgment for $25,000 entered against them in default of appearance. A preliminary point was taken for the plaintiff that the notice of motion did not set out the grounds of objection relied on and that there was non-compliance with O. 70 r. 3. The defendants argued that the object of O. 70 r. 3 was to give the other party notice of the case he had to meet, and in this case, the grounds for the application though omitted in the notice of motion were clearly set out in the affidavit.

Held: as the grounds of objection were fully set out in the affidavit and as both the notice of motion and the affidavit were served on the plaintiff at the same time, it could not be said that he was taken by surprise.

Cases referred to:—

(1) *Petty* v. *Daniel* (1887) 34 Ch.D. 172.

(2) *Baillie* v. *Goodwin & Co.* (1886) 33 Ch.D. 604.

CIVIL SUIT.

Tara Singh for the plaintiff.

C. Thambiah for the defendants.

Cur. Adv. Vult.

Ismail Khan J.: This is an application by motion in which the defendants seek to set aside a judgment for $25,000 entered against them in default of appearance.

A preliminary point was taken for the plaintiff that the notice of motion does not set out the grounds of objection relied on and that there is non-compliance with Order 70 rule 3 which reads:—

"When an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion."

It is contended for the plaintiff that having so failed to set out their grounds of objection, the defendants cannot now rely upon them. My attention was drawn to the case of *Petty* v. *Daniel* [1] at p. 180.

For the defendants it was argued that the object of Order 70 rule 3 is to give the other party notice of the case he has to meet. In this case, the grounds for the application though omitted in the notice of motion are clearly set out in the affidavit; one of these being the invalidity of the service of the writ upon the defendants. There is nothing in the case cited by the plaintiff to indicate whether an affidavit was used in support of the application. There may be cases where an affidavit could be dispensed with. Where such is the case, it is only fair to the other party that the summons or

notice of motion should state the several objections relied upon. Here, the grounds of objection are fully set out in the affidavit and as both the notice of motion and the affidavit were served on the plaintiff at the same time, it cannot be said that he was taken by surprise. In the case of *Baillie* v. *Goodwin & Co.*,[2] a preliminary objection was taken that the notice of motion did not set out the objections intended to be relied upon in pursuance of Order 70 rule 3. Notwithstanding the failure to comply with Order 70 rule 3, North J. made an order setting aside the service of the writ. He held that the failure to comply with Order 70 rule 3 was only a ground for depriving the party of their costs.

The objection fails and this application will be heard on a date to be fixed.

Objection overruled.

Solicitors: *Sault, Keith Sellar & Co.; Xavier & Thambiah.*

LING SEE LOCK v. SUPERVISOR OF ELECTIONS & ORS.

[O.Cr.J. (MacIntyre J.) March 19, 1965]

[Ipoh — Miscellaneous Criminal Application No. 21 of 1964]

Election — Failure to transmit declaration and return of election expenses within prescribed time — Authorized excuse — Election Offences Ordinance, 1954, s. 30(1) — Procedure.

The appropriate procedure for an order of allowance of an authorized excuse for failure to transmit a declaration and return of election expenses within the prescribed time is by way of originating motion. The application may be made *ex parte*. In this case it was held on the evidence that the applicant had an authorized excuse for his failure to transmit to the proper officer within the prescribed time the return and declaration regarding his election expenses.

CRIMINAL APPLICATION.

Applicant in person.

Mohd. Daim bin Haji Mohd. Zainuddin (Deputy Public Prosecutor) for the Public Prosecutor.

MacIntyre J.: This application is intituled Miscellaneous Criminal Application No. 21 of 1964. Because the application is made under the provisions of section 30(1) of the Election Offences Ordinance No. 9 of 1954 for an order of allowance of an authorised excuse for failure to transmit a declaration and return of election expenses within the prescribed time, it is regarded as falling within the criminal jurisdiction of the court. It would appear that in England the normal practice under section 21 of the Municipal Elections (Corrupt and Illegal Practices) Act of 1884, which corresponds to section 30(1) of our Election Offences Ordinance is to make the application *ex parte* and by way of a notice of motion. The procedure in England is prescribed by law but our Ordinance does not prescribe the procedure for applications under section 30(1). In the circumstances I would have thought that the appropriate procedure here would be by way of an originating motion.

Be that as it may, I do not think that the provisions of section 30(1) require the supervisor of elections, the Public Prosecutor, and the rival candidate or candidates to be cited and served as respondents. What the section requires it that "the other candidate, the proper officer and any elector within the constituency, electoral ward or electoral district" should be given an opportunity of being heard. That does not, in my opinion, imply that the interested persons should be cited and served as respondents, as it has been done in the present application before me. It would be absurd, for instance, to read into this section a requisition which would imply that every elector within an electoral area should be cited and served as respondent; and yet I see no reason if that was the implication, why a distinction should be drawn as regards procedure between the rival candidate and the proper officer on the one hand and the elector on the other. My reading of the section is that all that is required to be done in this context, is to notify the parties of their right to be heard and of the date, time and nature of the proceedings by serving the notice, either personally, if possible, or by advertisement in the local press.

Again, I am not at all certain that the "proper officer" to be served is the supervisor of elections and not the returning officer who was in charge of the election within the particular electoral area. However, in this case, I consider the service on the supervisor of elections as sufficient notice on the returning officer.

In my opinion, the Public Prosecutor should not have been made a respondent on this application. The learned deputy public prosecutor, who incidentally appeared on behalf of the Public Prosecutor and the supervisor of elections and consented to an order of allowance of an authorised excuse justified his being made a party to this application by virtue of the provisions of 23(1) of the Ordinance. With due respects, I disagree with that view, since that section has nothing to do with the question of procedure under section 30(1).

However, in view of the practice in vogue in this High Court, I do not propose to strike out this application. I shall treat it as an *ex parte* application by striking out the names of the respondents from the record.

I am satisfied from the evidence before me that the applicant has an authorised excuse